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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CHICAGO, ILLINOIS

ORIGINAL

October 5, 1994

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, DC 20554

Dear Mr. Caton:

On behalf of E.F. Johnson Company, transmitted herewith are Comments on the Notice of Proposed Rulemaking, In the Matter of Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, GN Docket No. 94-90, FCC 94-202 (released August 11, 1994). Should there be any questions concerning this submission, please contact Russell Fox at (202) 408-7113 or the undersigned at the above number.

Sincerely,



Lauren S. Drake

Enclosure

cc: Chief, Land Mobile and Microwave Division,  
Private Radio Bureau

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OCT - 5 1994

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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Eligibility for the Specialized )  
Mobile Radio Services ) GN Docket No. 94-90  
and Radio Services in the )  
220-222 MHz Land Mobile Band )  
and Use of Radio Dispatch )  
Communications )

To: The Commission

**COMMENTS OF E.F. JOHNSON COMPANY**

E.F. Johnson Company ("E.F. Johnson" or the "Company"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC or "Commission") hereby submits its Comments in response to the Notice of Proposed Rule Making ("Notice") adopted in the above-referenced proceeding<sup>1</sup> in which the Commission considers whether (1) to amend its rules governing licensee eligibility in the Specialized Mobile Radio ("SMR") service and in the commercial 220-222 MHz land mobile services; and (2) to permit common carriers to offer dispatch services on common carrier channels.

**I. INTRODUCTION**

E.F. Johnson is a leading designer and manufacturer of radio communications and specialty communications products for commercial and public safety use. Founded over seventy years ago as an electronic components manufacturer, E.F. Johnson entered the radio communications equipment market in the late 1940's and is one of the three largest providers of

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<sup>1</sup> Notice of Proposed Rule Making, GN Docket No. 94-90, FCC 94-202 (released August 11, 1994).

land mobile radio systems in the United States. It produces base stations, vehicular mounted and portable transmitters that operate in various portions of the radio spectrum that are used by a variety of entities requiring communications capabilities. The Company manufactures products used by, among others, SMR licensees in the provision of dispatch services.

In this Notice the Commission proposes to eliminate the current prohibition against common carriers offering dispatch services. The Commission seeks comments on whether permitting all mobile service common carriers to provide dispatch service will improve available services and lower consumer costs by increasing competition.

Allowing common carriers to enter the dispatch market may have a significant impact on many SMR licensees. E.F. Johnson is a major manufacturer and distributor of products to this segment of the telecommunications industry. Thus, any new rules adopted as a result of the Notice will affect the Company's ability to sell its products. Accordingly, E.F. Johnson is pleased to have this opportunity to submit the following Comments in response to the Notice.

## **II. COMMENTS**

### **A. Competition**

The Commission appears to have pre-judged the outcome of this proceeding by declaring elsewhere that the elimination of the prohibition on common carriers offering dispatch service may increase the potential for competition.<sup>2</sup> Nevertheless, the Company submits that allowing common carriers to offer dispatch services would have a significant anti-competitive impact on the market. The Commission reasons that lifting the dispatch prohibition would increase the number of service providers and competition, ultimately resulting in lower cost services.

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<sup>2</sup> See Third Report and Order, GN Docket No. 93-252, Released September 23, 1994 (FCC 94-212) ("CMRS Third Report and Order") at Paragraph 76.

However, any such benefit to consumers would be only temporary. Admitting cellular providers in particular into the dispatch market will ultimately drive up the price of dispatch service, or make low cost dispatch service unavailable.

The majority of “local” SMR licensees are small businesses.<sup>3</sup> Because of the significant disparity in the number of channels for which they are licensed, local SMR operators cannot generate the same level of revenue as cellular companies and cannot reasonably be expected to compete with them economically. If cellular providers are allowed to enter the dispatch market, they will be able to provide dispatch services at artificially low prices through cross subsidization of their traditional mobile telephone service. Local SMR licensees simply will not be able to reduce their prices to compete. Ultimately, cellular providers will drive SMR licensees out of the market. Cellular providers will then have free reign to offer dispatch services at traditional cellular rates without the low-cost competition of local SMR licensees.

Currently, consumers are able to obtain dispatch service at a relatively low cost. Consequently, it is not necessary for the Commission to provide a check on anti-competitive conduct by increasing the eligible pool of providers. Rather, such a temporary “increase in competition” will only harm small SMR businesses and ultimately defeat the goal of benefiting the consumer.

## **B. Spectral Efficiency**

In addition to failing to provide additional competitive service to the consumer, the idea of cellular companies providing dispatch service does not comport with the equally important

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<sup>3</sup> The CMRS Third Report and Order recognizes that there are differences between “local” and wide area SMR systems. To the extent that the Commission subjects wide area SMR systems and cellular licenses to comparable regulatory schemes, E.F. Johnson urges that the Commission extend the dispatch prohibition to wide area SMR systems as well.

Commission goal of promoting spectral efficiency. Local SMR service was designed specifically to provide two-way radio communications. Cellular technology, on the other hand, was designed and operates most efficiently as a telephone service. Thus, it is important to protect SMR businesses in order to promote the most spectrally efficient method of providing dispatch service. If cellular licensees are unable to fill their capacity using telephone service, the Commission should recapture that spectrum for licensing to other entities or for other uses, rather than permit them to use the spectrum in an inefficient fashion to the ultimate detriment of consumers.

It is well-established that spectrum is a limited resource that belongs ultimately to the public. Thus, it is in the public interest to encourage the best and most effective uses of spectrum. Allowing cellular providers to enter the dispatch market does not encourage such use. SMR continues to be the most logical, practicable, and spectrally efficient way of providing dispatch service to the public.

### **III. CONCLUSIONS**

Eliminating the prohibition against allowing common carriers to provide dispatch service poses a serious threat of anti-competitive conduct. The suggestion that consumers will benefit from the initial increased competition is short-sighted as the entry of cellular providers into the dispatch market will ultimately eliminate the participation of local SMR licensees. Moreover, altering the Commission's rules in this manner does not promote the most efficient use of spectrum and therefore does not best promote the public interest.

**WHEREFORE, THE PREMISES CONSIDERED,** E.F. Johnson Company hereby submits the foregoing Comments and urges the Commission to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

**E.F. JOHNSON COMPANY**

By: *Lauren S. Drake*

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Its attorneys

Dated: October 5, 1994